

**DURHAM, NORTH CAROLINA
MONDAY, MAY 17, 2010
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Excused Absence: Council Member Clement.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation and the pledge of allegiance.

Mayor Bell read the following proclamations proclaiming May 16-22, 2010 as National Public Works Week that was presented to Public Works Director Katie Kalb and she gave a video presentation on the Apex Street Bridge and Access Ramp construction. The Mayor presented certificates of appreciation to the students [juniors/seniors] from North Carolina School of Science and Math for their efforts during a recent food drive. Finally, the Mayor read a Resolution Memorializing Charles Buchanan Markham which was presented to his nephew, Buz Shuford.

MOTION by Council Member Woodard seconded by Council Member Ali to excuse Council Member Clement from the May 17, 2010 City Council Meeting was approved at 7:22 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Clement.

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk. Regarding GBA #30 [Regulation of Private Utilities – Revision of Fee Structure and Discounting of Prior Fees by 25% if Paid Prior to September 1, 2010], City Manager Bonfield asked that the public hearing be opened and continued to the June 7, 2010 City Council Meeting.

MOTION by Council Member Catotti seconded by Council Member Woodard to accept the City Manager's priority item was approved at 7:24 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Clement.

There were no priority items from the City Attorney and City Clerk.

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. Consent Agenda Items #5 [Ordering Petitioned Improvements] and #21 [Parking Fee Changes] were pulled.

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MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to approve the Consent Agenda as amended was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

[CONSENT AGENDA]

SUBJECT: APPROVAL OF CITY COUNCIL MINUTES

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to approve City Council minutes for the March 25, 2010 Special City Council Meeting, April 5, 2010 and April 19, 2010 City Council Meetings; and

To approve City Council action taken at the March 18, 2010 and April 8, 2010 City Council Work Sessions was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: CITIZENS ADVISORY COMMITTEE - APPOINTMENT

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to appoint Clark R. Grundler to the Citizens Advisory Committee with the term to expire on June 30, 2013 was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: AUDIT SERVICES OVERSIGHT COMMITTEE - APPOINTMENT

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to appoint Maticia Sims to the Audit Services Oversight Committee to represent Business Community with the term to expire on June 30, 2013 was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: FEDERAL CONTRACT PURCHASE WITH GREGORY POOL EQUIPMENT – ONE (1) WHEELED LOADER

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to enter into a contract with Gregory Poole Equipment Company, in the amount of \$134,965.00 for providing the City with one (1) wheeled loader was approved at

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7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

**SUBJECT: STREET ACCEPTANCES - CARDINAL LAKE – PHASES 2, 7 AND 13 –
CARPENTER POINTE, PHASE III – GLENNSTONE, PHASE II -
SWANNS MILL – PHASES 1, 2, 3, 4, 5, & 6**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to accept the streets on the list for maintenance by the City of Durham was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

Cardinal Lake – Phases 2, 7 and 13

- 1) Cardinal Lake Drive - from the end of existing construction @ STA 28+27 southwest to the end of Phase 2 construction at STA 53+80 (2,553'), and
- 2) Medallion Drive – from the beginning of construction at STA 10+00 (at existing Medallion Drive) south then east to the centerline of Cardinal Lake Drive (1,278'),
- 3) Golden Eagle Drive – from the centerline of Cardinal Lake Drive east to the end of Phase 2 construction at STA 24+21 (143'), and
- 4) Golden Eagle Drive – from the centerline of Cardinal Lake Drive southeast to the end of Phase 13 construction at STA 45+90 (142'), and
- 5) Autumn Leaf Lane – from the centerline of Cardinal Lake Drive east, then looping around back to Autumn Leaf Lane (2,182'), and
- 6) Bent Branch Court – from the centerline of Golden Eagle Drive north thru the cul-de-sac (273'), and
- 7) Ancient Oak Court – from the centerline of Golden Eagle Drive south thru the cul-de-sac (199'), and
- 8) Falling Star Way - from the centerline of Golden Eagle Drive southeast to the end of Phase 2 construction at STA 13+18 (318').

Carpenter Pointe – Phase III

- 1) Frammer Lane – from the north ditch line of Carpenter Road north to the centerline of Truss Way (1,468'), and

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- 2) Bevel Court – from the centerline of Frammer Lane west thru the cul-de-sac (327'), and
- 3) Chamfer Place – from the centerline of Frammer Lane east thru the cul-de-sac (382'), and
- 4) Jigsaw Drive – from the centerline of Frammer Lane east to the end of construction @ STA 15+10 (500'), and
- 5) Truss Way – from the centerline of Jigsaw Drive northwest thru the cul-de-sac (890'), and
- 6) Renovators Place – from the centerline of Frammer Lane west to the existing portion of Renovators Place (200').

Glennstone – Phase II

- 1) Lady Slipper Lane – from the centerline of Glennstone Drive south to the end of Phase I construction @ STA 10+95 (95'), and
- 2) Chimney Stone Road – from the end of existing construction at STA 10+96.33 north to the end of Phase II construction @ STA 18+84 (788').

Swanns Mill – Phases 1, 2, 3, 4, 5, & 6

- 1) Miller Drive – from the north ditch line of Hebron Road to the end of construction @ STA 29+67.45 (1,937'), and
- 2) Cozart Street – from the centerline of Miller Drive east then north to the end of construction @ STA 33+19.34 (2,319'), and
- 3) Hoppers Drive – from the centerline of Swanns Mill Drive south thru the cul-de-sac (1,021'), and
- 4) Calvander Court – from the centerline of Cozart Street south thru the cul-de-sac (212'), and
- 5) Swanns Mill Drive – from the north ditch line of Hebron Road north then west to the centerline of Miller Drive (1,897'), and
- 6) Damsel Way – from the centerline of Hoppers Drive east to the centerline of Swanns Mill Drive (481'), and
- 7) Genlee Court – from the centerline of Miller Drive west thru the cul-de-sac (223').

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SUBJECT: RESOLUTION MEMORIALIZING CHARLES BUCHANAN MARKHAM

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to adopt a Resolution Memorializing Charles Buchanan Markham was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

Resolution #9719

SUBJECT: AMENDMENT TO LOAN AGREEMENT AND RELATED DOCUMENTS BETWEEN STEWART CIRCLE LP AND THE CITY OF DURHAM FOR 20 LOW-INCOME TAX CREDIT UNITS AT STEWART HEIGHTS (FORMERLY MUTUAL HEIGHTS)

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to amend the Loan Agreement and associated legal documents with Stewart Circle LP to provide permanent second mortgage financing at an interest rate of 0% to be deferred for thirty (30) years with a balloon payment at the end of thirty years was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: COMPUTER AIDED DISPATCH MAINTENANCE AGREEMENT - SUNGARD PUBLIC SECTOR INC.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute the agreement with SunGard Public Sector Inc. for a Computer Aided Dispatch Maintenance Contract in the amount of \$178,938.00 payable from the Emergency Telephone System Surcharge fund was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: SELECTION OF FINANCIAL ADVISOR - STEPHENS, INC.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to enter into an agreement to retain Stephens, Inc. as the City's Financial Advisor for a period of three years was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

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SUBJECT: LEASE BETWEEN THE CITY OF DURHAM AND THE ALBRIGHT COMMUNITY ASSOCIATION - 1017 JUNIPER STREET, PARCEL ID# 111075

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute the five-year Lease Agreement with Albright Community Association to lease the property at 1017 Juniper Street, Parcel ID# 111075 was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: DURHAM CITY-COUNTY INTERLOCAL COOPERATION AGREEMENT FOR INSPECTION SERVICES - COUNTY OF DURHAM

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute the Interlocal Cooperation Agreement between the City of Durham and the County of Durham for the provision of inspection services for another five-year term was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: CITY-COUNTY INTERLOCAL AGREEMENT – SUSTAINABILITY OFFICE – COUNTY OF DURHAM

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute the City-County Interlocal Agreement between the City of Durham and County of Durham to continue the Sustainability Office for a five year period was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: 2009 ANNUAL REPORT - DURHAM CITY-COUNTY PLANNING COMMISSION

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to receive the 2009 Annual Report from the City-County Planning Commission was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

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SUBJECT: AIR SPACE AGREEMENT – NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR THE AMERICAN TOBACCO TRAIL PHASE E

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute an Air Space Agreement with the North Carolina Department of Transportation for the American Tobacco Trail Pedestrian Bridge over Interstate 40 was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: WATER EXTENSION AGREEMENT WITH 1452, LLC FOR CLAIRMONT AT HILLANDALE, A 240 UNIT APARTMENT COMPLEX

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to enter into a water extension agreement with 1452, LLC to serve Clairmont at Hillandale, a 240 unit apartment complex was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: CONTRACT ST-248, HARVARD AVENUE STREET IMPROVEMENT PROJECT - TRIANGLE GRADING AND PAVING, INCORPORATED

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute a contract for ST-248 Harvard Avenue Street Improvement Project with Triangle Grading and Paving, Incorporated in the amount of \$487,962.27;

To establish a contingency fund in the amount of \$97,592.45 (20%); and

To authorize the City Manager to negotiate change orders provided that the cost of all change orders does not exceed \$97,592.45 and the total project cost does not exceed \$585,554.72 was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: DELL SERVER LEASE AGREEMENT WITH DELL MARKETING

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute a four-year lease agreement with Dell Marketing L.P. for two Dell servers and VMware licensing in the amount of \$20,971.80 annually for four (4) years, for a total of \$83,887.20; and

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To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the dollar amount and the modifications are consistent with the general intent of the existing version of the agreement was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: INCREASE CONTRACT AMOUNT WITH LANIER PARKING SYSTEMS OF NC, INC. FOR PARKING SYSTEM MANAGEMENT SERVICES

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to increase the contract amount as necessary to reimburse Lanier Parking Systems of North Carolina, Inc. for special event parking expenses consistent with the contract terms, which additional amount is estimated to be \$151,200.00 for a new total estimated contract amount of \$3,986,706.67; and

To adopt an ordinance amending the FY 2009 -10 City of Durham Budget Ordinance, the same being Ordinance 13861 for the purpose of incorporating additional revenues and appropriations in the amount of \$75,000.00 was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

Ordinance #13988

SUBJECT: FIRST TRANSIT CONTRACT AMENDMENT

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute an amendment to the contract with First Transit to include the higher rates paid for the paratransit service as denoted in Attachment 1, effective July 1, 2010, with the provision that 100 percent of the additional payment be used to increase the wages of the paratransit service employees to at least \$11.40 per hour and to avoid any wage compression that such an increase might create was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

SUBJECT: ADOPTION OF PROPOSED WATER AND SEWER RATES FOR FY 2010- 2011

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to adopt an ordinance amending Chapter 15 of the Fee Schedule for the City of Durham; Part 15-104A, (a) INSIDE CITY (5) Service Charge and (b) OUTSIDE CITY (5) Service Charge

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effective July 1, 2010 was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

Ordinance #13990

The City Council disposed of the following agenda items at the May 6, 2010 Work Session:

19. U-0071 East End Connector

To support the recommendations of the Ad Hoc Committee and submit these recommendations as comments to North Carolina Department of Transportation on the Environmental Assessment for U-0071, the East End Connector.

(This item was approved at the 05/06/10 Work Session with a vote of 6/0)

31. Janet Apter

To receive comments from Janet Apter regarding “Go Pink for the Cure – Durham”.

(Citizen did not appear at the 05/06/10 Work Session)

32. Carolina Population Center

To receive comments from Sharon E. Loza regarding National Children’s Study.

(Citizen did not appear at the 05/06/10 Work Session)

33. Y.E. Smith Neighborhood

To receive comments from Reverend Melvin Whitley regarding external rental fees.

(Comments were received at the 05/06/10 Work Session)

34. Durham Committee on the Affairs of Black People, NCLC, Inc

To receive comments from E. Lavonia Allison regarding the Police Department.

(Comments were received at the 05/06/10 Work Session)

35. Waldo Fenner

To receive comments from Waldo Fenner regarding the police and neighborhood improvement.

(Comments were received at the 05/06/10 Work Session)

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[GENERAL BUSINESS AGENDA]

SUBJECT: PROPOSED FISCAL YEAR 2010-2011 BUDGET AND FISCAL YEAR 2011-2016 CAPITAL IMPROVEMENT PLAN (CIP)

To receive a presentation from the City Manager on the proposed Fiscal Year 2010-2011 Budget and Fiscal Year 2011-2016 Capital Improvement Plan.

City Manager Bonfield gave a power point presentation on the FY 2010-2011 Proposed Budget highlighting the following:

National Reality and Local Impact, Durham Overcomes Tough Times, Budget Direction & Input and Council and Community Priorities,

Property Tax rate increase of 1.19 cents to be used in two areas: .49 cents to be used to cover increase in debt service on bonds that citizens approved in 2005 and 2007 as well as .7 cents to replace stimulus dollars that covered a transit costs over the last two years,

General Fund Debt Ratio, General Fund Balance, Street Resurfacing,

Water and sewer rate service charge increase of 1.34% effective August 2010 and automated meter reading process to begin this summer,

Stormwater Rate will increase in July 2010,

Parking fee adjustment -- first parking fee increase in ten years;

Solid waste fee adjustment -- 50 cents a ton tipping fee increase;

Transit --service level will not change this budget year, proposing a Bull City Connector line through the heart of downtown as well as establishing fare free service for North Carolina Central University students, faculty and staff between NCCU's campus and downtown, negotiating a partnership with Triangle Transit to operate the Transit system this Fall;

Additional Funding Proposals--Downtown Fund, Neighborhood Revitalization, Deferred Maintenance, Fleet Replacement Program and Street Light Program;

Personnel Impact -- 31 total positions, 15 filled and 16 unfunded/vacant, and 5 have been placed to date; 20 new and/or unfrozen positions--Walltown, Fire Station #15, Water and Sewer, Stormwater Services;

No pay-for-performance or pay plan increases for general employees or police and fire; Supplemental 401(K) retirement will remain at 3 percent excluding sworn police; impact of state mandated \$1.8 million increase to retirement fund;

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Compensation: will review City's financial standing in January 2011 to determine if funding is available to provide one-time bonuses to all employees at that time. In addition if supportive by sustainable revenues will recommend reinstating pay-for-performance increases as well as fire pay plans effective July 1, 2011;

Medical costs: recommend changing to self-insured plan effective September 2010 and 1,931 employees/retirees will see no premium increases;

Citizen Impact -- no program or service level reductions;

Overall proposed budget - \$353.4 million; General Fund budget - \$206 million; General fund Resources - reduction of \$917,207 in revenues and no appropriation of fund balance; General Fund Revenues; General Fund Expenditures;

Next Steps-- Council Budget Work Sessions May 25 - 28, 2010, June 7th public hearing and budget adoption June 21, 2010 City Council Meeting; Ingredients for Success;

Durham's Road to the Future - Durham Strategic Plan, Long-Term Financial Plan, FY 2010 - 2011 Budget.

Mayor Bell thanked the City Manager and everyone for their work on the proposed budget. The Mayor announced this item is not a public hearing, but an opportunity for Council to receive the City Manager's proposed budget.

No action was taken by the City Council on this item.

[PUBLIC HEARINGS]

SUBJECT: RESOLUTION ESTABLISHING AN ECONOMIC DEVELOPMENT FINANCIAL ASSISTANCE AND INCENTIVE POLICY FOR JOB CREATION, JOB RETENTION AND CAPITAL INVESTMENT

Economic and Workforce Development Director Kevin Dick gave a power point presentation highlighting the proposed changes to the existing economic development incentive policy for capital investment and job creation. He acknowledged staff and stakeholders for their input regarding changes to the existing policy approved by Council in November 2008. He reported the changes include changing the geographic areas to adjust for the Unified Development Ordinance changes that were approved by Council in February, implementing new financing programs in additional neighborhoods that can benefit from capital investment and job creation, a more detailed and objective set of evaluation criteria that can provide a fair and equitable process and promote the objectives that are contained in plans and studies; increased stability for the City to secure its interest by providing financial assistance to businesses; forgivable loans or conditional grants with claw back provisions are being recommended, increased responsiveness, the ability for staff to make decisions on certain projects along the line of contracting policy that was approved in

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January 2010, mandated start dates for project so that there is a reasonable amount of time after Council approval and staff is recommending nine months. He discussed the new financing programs to include: Building Improvement Grants, Small Developer Project Fund, Merchandise-Based Incentives would be a flat amount across geographic areas and Sign grants. He outlined how these financing programs would be paid for highlighting that the neighborhood based projects would be taken out of the Neighborhood Revitalization Fund, and projects located in downtown would come from the Downtown Revitalization Fund. He noted if money is available it could be used for projects in target urban growth areas to include Wellons Village, Avondale Drive and North Roxboro known as the Bragtown. He noted the proposed revisions would provide additional capital investment, job creation as well as increase the tax base.

Mayor Bell opened the public hearing.

Victoria Peterson spoke in support of the concept for job creation for this community, but expressed concerns that this the first time that she has heard about these changes. She raised concerns that nothing is in the policy that addresses high tech, fiber optic and telecommunication, solar/green jobs and asked if these components could be added. She said the dollar amount for small companies or a group of individuals is not clear, asked that workshops be scheduled to inform the community about these changes and to ensure Durham residents are trained and hired.

Scott Harmon commented on the open process and spoke in support of this item. He asked that designated funding for Parrish Street/Historic Black Wall Street not be redirected to fund this project.

Ted Conner, representing the Durham Chamber of Commerce, spoke about the open process and noted the revised policy will serve as a valuable tool to support and stimulate smaller projects within the UGA and targeted areas needing attention.

Melissa Norton, representing Downtown Durham, Inc., expressed support for the economic development policy presented tonight. She stated the programs and incentives contained therein represent a significant step towards moving downtown closer to its potential 24/7 live, work, play environment.

Larry Hester commented on the RKG Study noting in 2005 an implementation plan was developed, asked that the community and the businesses in the corridor be informed of these changes so that they can take advantage of these incentives. He asked that there be long-term sustainable employment across the entire community, that the small development project fund range be lowered by \$50,000 if you are trying to attract small businesses, that \$750,000 be focused in the five corridors only, and that the group work with Economic Development Office in terms of sharing ideas.

Pastor Sylvester Williams, representing the Durham Business and Professional Chain and Durham Committee on the Affairs of Black People, asked that the Fayetteville Street Master Plan be adopted, that development be encouraged in the five corridors, more community involvement during the decision making process, ensure revitalization that will meet the needs of existing residents, emphasize participation of neighborhood residents in all facets of revitalization,

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promote retention and expansion of existing businesses, ensure that any resident or businesses have the opportunity to benefit from the revitalization and promote inter-departmental coordination and communication with City departments and that the capital investment fund be lowered by \$50,000.00.

E. L. Allison stated the Durham Business and Professional Chain and the Durham Committee on the Affairs of Black People are working closely together. She asked staff to work with the Economic, Housing and other Committees along with the Durham Business and Professional Chain regarding this issue. She made comments on the following issues: Parrish Street, Fayetteville Street, demographics, housing and jobs.

Mayor Bell closed the public hearing.

Economic Development Director Kevin Dick answered questions raised regarding the high demand industry, noted dollar amounts are addressed on pages 6 and 7 of the memorandum as well as in the policy, commented on representation from the neighborhoods, downtown and small business community, economic development organizations, property owners, stated there is a provision in the plan for attention to be given to job link registrants, and job link career system; reported the Parrish Street fund is only dedicated for Parrish Street projects. He noted there are elements of the existing policy that do not change relative to job creation and job retention; policy would provide incentives to companies that hire people from specific areas within Durham; staff would be happy to integrate other existing plans/studies that relate to the areas that are in this policy, i. e, the Fayetteville Street Master Plan. For clarification, Kevin Dick announced that the total project would cost \$300,000 - \$2 million.

Council Member Ali asked staff to ensure that the plan is communicated to the Small Business Advisory Committee who could provide training sessions that are needed in the community and that this information be communicated during Minority Enterprise Development Week and with Equal Opportunity and Equity Assurance.

Council Member Brown commented on the efforts of Bill Kalkhoff with Downtown Durham, Inc.

Mayor Bell stated this is a task that is evolving and can only be successful if we continue to provide and maintain contact with the community, especially the areas that would be impacted by the proposed changes.

MOTION by Council Member Ali seconded by Mayor Pro Tempore Cole-McFadden to receive public comments on the proposed resolution; and

To adopt a Resolution Establishing an Economic Development Financial Assistance and Incentive Policy for Job Creation, Job Retention and Capital Investment Repealing Resolution #9673 was approved at 8:37 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

Resolution #9718

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**SUBJECT: HOUSING CODE DEMOLITION LIEN REDUCTION OR
CANCELLATION ORDINANCE**

Neighborhood Improvement Services Director Constance Stancil made comments on this item. She provided Council with information pertaining to questions raised at the Work Session, discussed meetings held regarding this item and stated several citizens have requested that the City work with them to convey their property to the City in lieu of payment.

Mayor Bell opened the public hearing.

Philip Azar, representing Habitat for Humanity, spoke in support of the Housing Code Demolition Lien Reduction or Cancellation Ordinance. He provided Council with the following information requesting that this information be addressed during the implementation of the policy:

1. “Affordable Housing” is not defined. Although “affordability” is often understood to as 80% or below of area median income, “affordable housing” can include both rental and homeownership. Many of the properties that will benefit from the lien forgiveness process may have formerly been rental properties that fell into a blighted state while rental properties. We believe that there should be a meaningful preference given to homeownership. Homeownership is better for the neighborhoods, better for the households, more consistent with the consolidated plan and places less of a monitoring burden on the City than an affordable rental program.
2. Lien forgiveness, other than through conveyance to the City, seems to be tied to “construction” of affordable housing and to certification of compliance by the “City/County Planning Department.” This contains two challenges: (a) construction of affordable housing is relatively easy, but getting the property occupied by a qualified household can be difficult and, if not achieved, leads to a more vacant properties and (b) although the City/County Planning Department certainly has the ability to inspect a building to ensure that it was built to code, that department may not have the resources to ensure that the correct affordability covenants have been put in place or that the building is occupied by qualified low-income households. It might be more appropriate to tie the lien forgiveness to “construction” of affordable housing and “transfer” of the property to a qualified household. It might also be easier to enforce the covenants if placement of covenants were a prerequisite to forgiveness and multiple departments had enforcement authority.
3. There does not appear to be anything in the ordinance that forbids a developer from paying a property owner to convey the property to that particular developer. The easiest way to prevent such payments is for all properties to be conveyed to the city for disposition to for-profit or non-profit developers. The prior owner of the property would then compete on par

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with other developers. Alternatively, it would be helpful for City Council or the City Manager to clarify that such payments are appropriate (or not) and, if not appropriate, to specify an enforcement mechanism so that all developers understand and adhere to the rules.

4. With respect to properties that are conveyed to the City and disposed of by the City, we request that preference be given to developers who will transfer the property to households with lower incomes. The lien forgiveness program is a form of subsidy. While people may disagree as to whether it is appropriate for the property owner to make money off the lien forgiveness program by accepting payments from developers, it certainly is appropriate for the City to encourage development of housing that benefits households who need it most.

City Manager Bonfield indicated there is language in the resolution that would require work by staff on the implementation.

Neighborhood Improvement Services Director Constance Stancil reported there was a change in the ordinance to allow the City Manager instead of Council to reduce the cancellation cost when the owner or subsequent owner builds affordable housing and that the ordinance would stay the same when the property is being conveyed directly to the City. She noted criteria would be established that would grade or rate each person who is submitting a bid/proposal when there is a tie. Ms. Stancil stated the only way a house would be demolished in a historic district the property would be unsafe and nothing could be done to save it.

Mayor Bell closed the public hearing.

MOTION by Council Member Catotti seconded by Council Member Woodard to receive public comments on the proposed revisions to Article VI, Chapter 10 of the Durham City Code captioned "Housing Code Demolition Lien Reduction or Cancellation Ordinance"; and

To adopt the Housing Code Demolition Lien Reduction or Cancellation Ordinance, which designates a new Section in Chapter 10, Article VI, 10-238(o), which authorizes Demolition Liens that arise pursuant to enforcement of the housing code to be reduced or cancelled under certain circumstances including when affordable housing is built on the vacant lot was approved at 8:50 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

Ordinance #13991

**SUBJECT: MAJOR SPECIAL USE PERMIT – MTC BUFFER REDUCTION FOR
AMERICAN TOBACCO TRAIL – PHASE E (M1000001)**

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To conduct a quasi-judicial public hearing to consider a Major Special Use Permit for reduction to the MTC buffers along a portion of I-40 to accommodate the southern extension of the American Tobacco Trail; and

To direct the Planning Director to prepare an Order for adoption, for 1) approval, 2) approval with conditions or 3) denial, or to continue the hearing to a specified later meeting. (A draft order for approval with staff recommended conditions will be available at the meeting).

Mayor Bell referenced the quasi-judicial hearing outlined on the agenda. He asked all parties involved to proceed to the clerk's station to be sworn in.

City Clerk Gray swore in the following individuals: Steve Medlin, Michael Stock, Ed Venable, Lee Murphy, Carl Bush, Tim Hayes, Dan Clever, Dilys Bowman, and Tom Stark.

Mayor Bell asked if any council member(s) needed to withdraw from the hearing due to a conflict which would prevent them from deciding the case in a fair and impartial manner.

No council members acknowledged conflict.

Mayor Bell asked council members if they had heard any information about this case other than what was presented at the work session.

No council members acknowledged they had heard information other than what was presented at the work session.

Mayor Bell asked the attorneys representing each side [proponents and opponents] to identify themselves and to take a seat on the front row.

Mayor Bell explained the proceedings for the major special use permit and cross examinations. He stated that all maps and material submitted as evidence should be given first to the City Attorney.

The hearing was opened by Mayor Bell.

Testimony from Staff

City/County Planning Director Steve Medlin stated staff requests that the staff report and all attachments be entered as a part of the permanent record and acknowledged that all required notifications have taken place, with affidavits on file. Mr. Medlin presented the following presentation:

Parsons Brinkerhoff, on behalf of the City of Durham, requests a reduction of the MTC buffer along a north and south portion of I-40 west of Fayetteville Road for the purposes of construction of a segment of the American Tobacco Trail (ATT). Due to the limitations on the type and amount of activity permitted within an MTC buffer, the request, in effect, removes the

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trail from the buffer by reducing the buffer width. Reductions of the required 100-foot buffer are permitted only with the approval of a major special use permit.

The American Tobacco Trail extension is proposed to connect to the existing southern terminus of the trail located on the north side of NC 54. The trail is then shown crossing NC 54 and continuing along Highgate Drive, where it then runs along I-40 and within the MTC buffer. A pedestrian bridge crossing of I-40 is shown and the trail continues west along I-40 and within the MTC buffer on the Southpoint Mall property until it connects to an existing trail that leads to Renaissance Parkway.

The MTC buffer is located within greenway easements secured by the City during site plan and zoning approvals for the residential and commercial development that is located on the affected parcels. The amount of reduction ranges from a complete reduction at the I-40 crossing, to a general range of approximately 43 feet to 70 feet on the north side, and 34 feet to 95 feet on the south side of I-40. Detailed buffer reductions are provided in the staff report, as well as in the written application, and within the attached site plan.

The buffer reduction request does not result in the elimination of all of the vegetation currently found within the buffer area. The attached site plan indicates specific limits of disturbance, indicating an amount of clearing necessary for the construction and installation of the trail. The plan indicates large areas of undisturbed vegetation, although no longer shown within the buffer, but remaining within the greenway easement and controlled by the City.

A corresponding site plan received a recommendation of approval from the Development Review Board (DRB) on March 19, 2010.

Mr. Medlin stated as a reminder, the City Council must make findings of fact under Section 3.9, and additional considerations in Section 4.9.3D2, of the Unified Development Ordinance as outlined within the staff report and that staff will provide a recommendation at the conclusion of testimony for this case.

Mayor Bell asked if there were questions from Council for staff. There were no questions from Council.

Testimony by the Applicant

Carl Bush, representing the applicant, provided City Attorney Baker with a copy of the power point presentation--American Tobacco Trail Phase E for review.

City Attorney Baker entered the power point presentation into evidence.

Carl Bush, of Parsons Brinckerhoff working on behalf of the City of Durham Public Works Department, presented the following power point presentation for the Major Special Use Permit requesting a Buffer Reduction for the construction of the southern extension of the American Tobacco Trail located within the existing MTC Buffer.

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The area of concern for the Buffer reduction is in the vicinity of I-40, Fayetteville Road, Highgate Drive and Southpoint Mall. The north side of I-40 the MTC Buffer abuts existing townhomes and apartments in a neighborhood off of Highgate Drive. The southside of I-40, the MTC Buffer abuts Southpoint Mall. He indicated the location of the existing/proposed MTC Buffer along the trail corridor. The trail located within this area of the Buffer reduction will consist of a 10 foot wide asphalt path as shown on the screen above. The trail will look like the existing sections of the American Tobacco Trail currently constructed to the north of I-40.

He addressed the Review Factors laid out within the application. Circulation and service entrances to the trail within the MTC Buffer will be provided by 3 access points. Access will be available from Highgate Drive, Southpoint Mall and Renaissance Parkway. No parking will be provided within the MTC Buffer. Parking will be available on adjoining city streets and Southpoint Mall and discussed artist rendering of the bridge over I-40. The trail will have lighting from the mall access entrance to Highgate Drive along one side of the trail. There will be pedestrian and accent lighting along the bridge. Trail signing will be by the standard signs currently in use along the existing sections of the American Tobacco Trail. No utilities will be relocated within this Buffer reduction. No open spaces will be preserved or created by this buffer reduction. The trail was located to preserve the existing undisturbed spaces and as many specimen trees as possible. Environmental Protection will be used to its fullest extent possible. Many methods were employed to provide environmental protection. The trail location and profile was set in order to obtain a No-rise certification from the City of Durham for the Gum Creek FEMA floodplain. The drainage design maintains the overland flow and existing drainage patterns where ever possible. Most of the trail stormwater currently flows into existing BMP ponds. We will construct localized structures near the trail itself to manage water quality. The trail will be screened by the existing trees and topography from I-40. Additional landscaping will be added around the trail in 2 areas that are lacking in vegetated opacity. This will allow areas lacking in natural buffers to develop a better screening. The areas on the greenway easement that will have the MTC Buffer protection removed from it will still be controlled by the Rights and Privileges of the City of Durham as the entire MTC Buffer in the vicinity of the American Tobacco Trail is in a Greenway Easement. The City will retain all rights of what can happen within the limits of a greenway easement.

The reduction of the MTC buffer to allow the construction of the ATT should have little effect on adjacent properties. All of the properties have existing greenway easements that were established during their development process. On the north side of I-40, a vegetated buffer was maintained between the trail and the apartments and townhomes. The staff comments expressed a concern with the trail location on the North side of I-40. We feel that this is the best location because it maintains a buffer between the trail and the adjacent apartment complex and the topography restricts the view from I-40. This trail location strikes a balance between the privacy needs of the residents and the sightlines of the I-40 users.

The Buffer Reduction is compatible with the adjacent properties. The MTC overlay is established to enhance the economic and aesthetic appeal and orderly development of properties adjacent to major highways. The adjacent properties have already been developed and the greenway easement was located within the MTC Buffer during their development.

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The trail location is consistent with the 2001 Durham Trails and Greenways Master Plan which states that “the American Tobacco Trail in the vicinity of I-40 shall utilize the MTC Buffer.”

Mr. Bush stated based upon these findings, he requested that the MTC Buffer reduction be approved for the construction of the American Tobacco Trail.

Mayor Bell asked if there were questions from Council for the applicant. He noted there were no questions from Council.

The Mayor stated no one signed up to speak in opposition to this Major Special Use Permit.

Tom Stark, representing the Open Space and Trails Commission, spoke in support of this item stating he was pleased with the plan presented today which would be an appropriate encroachment into the buffer for this trail.

Dan Clever, representing the Durham Bicycle and Pedestrian Advisory Commission, urged Council to approve the applicant’s request for a buffer reduction in the MTC overlay. He stated this request satisfies the following: the purpose of the MTC corridor overlay, the criteria for approval of a Major Special Use Permit, intent of the adopted trails and bike plans which show this as the best way to connect the two existing sections of the American Tobacco Trail.

Dilys Bowan, representing Triangle Rails to Trails Conservancy, made comments on the trail clean up and use. She urged Council to support this request.

Mayor Bell closed the hearing.

Staff's Recommendation

City/County Planning Director Steve Medlin reported based upon the testimony and evidence presented, staff recommends approval with the following conditions:

1. The proposed development and associated site improvements shall be substantially consistent with the site plan and site plan conditions submitted to City Council as part of the application and subsequently approved per case D09000196.

MOTION by Council Member Woodard seconded by Council Member Catotti to conduct a quasi-judicial public hearing to consider a Major Special Use Permit for reduction to the MTC buffers along a portion of I-40 to accommodate the southern extension of the American Tobacco Trail; and

To adopt an order an order granting, upon certain conditions, a Major Special Use Permit for the reduction of the MTC buffer for the American Tobacco Trail – Phase E – M1000001 was approved at 9:10 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

Ordinance #13987

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**SUBJECT: MAJOR SITE PLAN – AMERICAN TOBACCO TRAIL - PHASE E
(D0900196) (THIS IS NOT A PUBLIC HEARING)**

City/County Planning Director Steve Medlin stated this is the site plan which is a companion to the Major Special Use Permit item. He noted this site plan is for the entire trail section of approximately 1.89 miles. He stated staff is recommending approval of this request as it is consistent with the provisions of the Unified Development Ordinance and the Development Review Board recommended approval of this item at their March 19th meeting.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Ali to approve a major site plan for “American Tobacco Trail-Phase E,” submitted by Parsons Brinckerhoff on behalf of the City of Durham, for a 10 foot wide, 1.89 mile portion of a 4.1 mile public greenway trail to connect to the existing American Tobacco Trail system, on 5.68 acres of a 215.94 acre multi-parcel site, zoned Office and Institutional (with Development Plan) OI(D), Commercial Center (with Development Plan) CC(D), Office and Institutional (OI), Planned Development Residential 9.40 (PDR 9.40), Mixed Use (with Development Plan) MU(D), Residential Suburban Multifamily (with Development Plan) RS-M(D), Rural Residential (RR), Major Transportation Corridor Overlay (MTC), and Falls /Jordan District B (F/J-B), [PIN 0718-02-76-9130, 0104, 65-9783, 04-55-8566, 63-1274, 44-7263, 43-1182, 03-41-5881, 41-3149, 40-3905, 40-2717] was approved at 9:12 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

The trail starts as public sidewalk on the northwestern corner of Southpoint Crossing Drive and NC 54 Highway, moving westward along NC 54 to Highgate Drive, south through dedicated greenway easements within private properties, then crossing the I-40 right-of-way via a proposed bridge to the Southpoint Mall property. The trail continues south crossing Renaissance Parkway, and finally Massey Chapel Road, where it connects to the remaining proposed American Tobacco Trail within the former railroad right-of-way to extend to the Chatham County line.

Council Member Woodard encouraged his colleagues to visit the South Street/Lawson Street connector to the trail.

SUBJECT: ORDINANCE TO REVISE STORMWATER RATES

Public Works Director Katie Kalb stated this item recommends a stormwater rate increase of 9.3 percent effective July 1, 2010. She stated the stormwater program is fully funded by fees and there are no taxes associated with this program.

Mayor Bell opened the public hearing.

Allan Lang referenced the new federal regulation regarding this issue--developers must prevent soil runoff from damaging areas of streams of waterways and any disturbance if more than 10

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acres are required to monitor discharges.

E. L. Allison raised a concern with the increase in fees and felt that the public needs additional information regarding this issue.

Katie Kalb explained that there are no taxes involved with the stormwater program, discussed the National Pollutant Discharge Elimination System Permit and noted the Falls Lake Legislation which will ultimately result in fee increases. She reported this fee increase would help to provide 4.5 full-time employees for the stormwater program, and the new watershed program that is getting underway with Northeast Creek. She noted there are activities that the City must do in order to meet the requirements of the Permit and to provide the best water quality program. She stated the rate increase is regulation driven with the majority of the rate increase going to the Northeast Creek Watershed Plan and the remainder will go to hiring personnel for this program.

Council Member Brown asked staff if this is another unfunded federal mandate which the City has no choice, but to comply.

Public Works Director Katie Kalb replied that's correct.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to receive public comments on an Ordinance to Revise Stormwater Rates; and

To adopt an Ordinance to Revise Stormwater Rates by adding Part 13C-102 and Part 13C-103 to the Fee Schedule; remove Part 15-114 of the Fee Schedule and Repeal Resolution 8318, adopted March 17, 1997 was approved at 9:24 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

Ordinance #13992

SUBJECT: REGULATION OF PRIVATE UTILITIES – REVISION OF FEE STRUCTURE AND DISCOUNTING OF PRIOR FEES BY 25% IF PAID PRIOR TO SEPTEMBER 1, 2010

To receive public comments regarding the proposed new fee system for charges for inspection and regulation of construction of private utilities within the public rights-of-way;

To adopt the new fee system for inspection and regulation of construction of private utilities within the public rights-of-way; and

Discounting by 25% the existing fees for private utility inspection charged from July 1, 2006 to the time of adoption of the proposed ordinance if such fees are paid by September 1, 2010 and to authorize the City Manager to make appropriate refunds or credits for fees already paid during such time period.

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Mayor Bell opened the public hearing and noted the public hearing was continued to June 7, 2010 City Council Meeting at the request of the City Manager earlier in the meeting.

[ITEMS PULLED FROM CONSENT AGENDA]

**SUBJECT: SETTING PUBLIC HEARINGS TO CONSIDER ORDERING
PETITIONED IMPROVEMENTS - WATER MAIN ON STALLINGS
ROAD, BANDOCK DRIVE AND OLIVE BRANCH ROAD**

MOTION by Council Member Woodard seconded by Council Member Catotti to accept a Certificate of Sufficiency from the Manager of Engineering and Stormwater for each of the following petitions; and

To adopt a resolution setting a public hearing for June 7, 2010, to consider ordering each of the following improvements was approved at 9:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

Water Main on Stallings Road from Mineral Springs Road to South Property Line of PIN 0851-02-98-0871;

Water Main on Stallings Road from Oak Grove Parkway to Husketh Drive;

Water Main on Bandock Drive from Hillview Drive to Rondelay Drive and Rondelay Drive from Bandock Drive to West Property Line of PIN 0860-01-36-2444; and

Water Main on Olive Branch Road from Wake Forest Highway to Bookman Street and Bookman Street from Olive Branch Road to Bandock Drive.

SUBJECT: PARKING FEE CHANGES

Allan Lang made comments on the uncollected parking fees. He addressed the Council recommending that the City install parking meters as a source of income as well as consider the Dallas boot to place on cars that belong to residents outside the County where the City has been unable to collect fees.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to adopt an ordinance to increase the monthly contract fees and hourly rates at applicable parking facilities and surface lots was approved at 9:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti and Woodard. Noes: None. Excused Absence: Council Member Howard Clement, III.

Ordinance #13989

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There being no further business to come before the City Council, the meeting was adjourned at 9:27 p.m.

Linda E. Bratcher, CMC
Deputy City Clerk

D. Ann Gray, MMC
City Clerk